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April 20, 2004

RECEIVED

APR 20 2004

**By Hand**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYMs. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

02-6

Re: Children's Studio School - Public Charter School Request  
for Review of a Universal Service Administrative Company  
Denial of Appeal with respect to Application No. 250771

Dear Ms. Dortch:

Last night, I attempted to file the appeal of the Children's Studio School - Public Charter School ("Studio School") of a determination by the Universal Service Assistance Company that the Studio School was ineligible to receive E-rate funds granted for Fiscal Years 2001-02 because it named a representative of the service provider in Item 11 of its Form 470. I initially attempted to file by fax, but when my fax department had trouble in getting the document through, I filed the appeal electronically in order to insure that the appeal reached the Commission in a timely manner. Since I did not have electronic copies of some of the attachments, including the signed declaration in support of the appeal, I indicated in the comment section of the electronic submission that I would file the attachments under separate cover. Ultimately, my fax department was able to fax the entire appeal to the Commission, although it was required to break it into two pieces to do so. As a result of these difficulties, the Commission now has a complete faxed copy of the appeal -- albeit in two pieces -- and a partially complete copy filed electronically. (A copy of the confirmation form is attached to this letter.)

In order to assure that a single, complete document is in the Commission's hands, I am enclosing a complete copy of the appeal and request that this document be substituted for the various copies filed last night.

No. of Copies rec'd 01  
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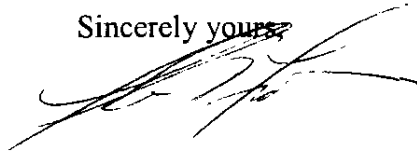
# ARNOLD & PORTER LLP

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Ms. Marlene Dortch  
April 20, 2004  
Page 2

If there are any questions concerning this matter, please let me know.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Theodore D. Frank', written over the closing 'Sincerely yours,'.

Theodore D. Frank

cc(by hand): Erin N. Einhorn, Esq.  
Division Chief, Telecommunications Policy Access Division  
Wireline Competition Bureau  
(by mail) Ms. Marcia McDonell



**The FCC Acknowledges Receipt of Comments From ...  
Children's Studio School  
...and Thank You for Your Comments**

**Your Confirmation Number is: '2004419493027 '**

**Date Received: Apr 19 2004**

**Docket: 02-6**

**Number of Files Transmitted: 3**

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*updated 02/11/02*

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re Appeal of the	)	
	)	
Children's Studio School	)	Application No. 250771
– Public Charter School	)	Funding Request No. 618040
Request for E-Rate Funding	)	
for Fiscal Years 2001-02	)	
	)	
Schools and Libraries Universal	)	CC Docket No. 02-6
Support Mechanism	)	
	)	

To: The Wireline Competition Bureau

**APPEAL OF THE CHILDREN'S STUDIO SCHOOL  
(Request for Review)**

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- Public Charter School

April 19, 2004

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re Appeal of the	)	
	)	
Children's Studio School	)	Application No. 250771
– Public Charter School	)	Funding Request No. 618040
Request for E-Rate Funding	)	
for Fiscal Years 2001-02	)	
	)	
Schools and Libraries Universal	)	CC Docket No. 02-6
Support Mechanism	)	
	)	

To: The Wireline Competition Bureau

**APPEAL OF THE CHILDREN'S STUDIO SCHOOL**

The Children's Studio School – Public Charter School ("the Studio School") hereby appeals the denial by the Administrator of the Schools and Libraries Division ("SLD"), Universal Service Administrative Company ("USAC"), of the Studio School's appeal of the SLD's decision holding that the Studio School is required to refund monies provided under the Commission's E-rate program for Fiscal Years 2001-02.<sup>1</sup> The SLD found that the Studio School was ineligible to receive the funding because the Studio School's Form 470 listed, in response to Item 11, the name of a school volunteer, Ms.

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<sup>1</sup> The USAC decision was adopted on January 20, 2004. On March 19, 2004, the Studio School filed a letter requesting a thirty day extension of time to file this appeal. That request has not been acted on and, under Section 1.46 of the Commission's rules, this appeal is timely. To the extent the Bureau disagrees with this conclusion, the Studio School hereby requests a waiver of the 60-day appeal period for the reasons set forth in the March 19<sup>th</sup> letter.

Gail Hawkins-Shirar, who was also associated with the service provider chosen by the school. On appeal, the USAC affirmed that decision.

### **Summary of Argument**

The USAC decision below rests on instructions for completing Form 470 that were adopted after the Studio School submitted its Form 470. To the best of the Studio School's knowledge, the instructions at the time its Form 470 was filed did not indicate that applicants could not name individuals associated with a service provider in response to Item 11. Moreover, contrary to the USAC's position in its decision, the current instructions, even if applicable in 2000, do not preclude applicants from naming the service provider in Item 11. Thus, whichever instructions applied, the Studio School application complied with them at the time it was filed.

Further, to the extent that the USAC decision correctly reflects the operative instructions, those instructions did not give the Studio School adequate notice of the requirements. Thus, they cannot serve as the basis for holding that the school was ineligible to receive an E-rate grant. Since the Studio School complied with a reasonable interpretation of the USAC instructions, the Bureau should reverse the determination below.

### **I. Background**

The Studio School is a public charter school under the laws of the District of Columbia. It was awarded a public charter school charter in 1996 by the District of Columbia Board of Education. It receives the majority of its funds from the District of Columbia through a per-pupil formula. As its name implies, the Studio School's Arts As Education<sup>®</sup> process is the principal vehicle through which it educates its students -- most

of whom come from impoverished backgrounds. Many come from broken homes with little support for their education. The Studio School employs respected artists from diverse cultures as teachers. Architects, visual and performing artists, and writers engage children in the artist's processes of inquiry, experimentation and critiquing as a rigorous, all-encompassing means of education.

The Studio School operates under extremely tight financial constraints and relies heavily on volunteers to supplement those limited financial resources. The school's principals have only limited technical expertise with respect to Internet access and the equipment and facilities needed to provide students with the benefits of the Internet – benefits the E-rate program was designed to provide. They have no familiarity with the Commission's rules or procedures or with the complex rules and procedures adopted by the USAC for filing and prosecuting applications for E-rate funding. As such, it relied on its volunteers to assist in preparing the application and identified the volunteer as the person to be contacted for technical information. Officials of the Studio School, however, evaluated the applications submitted and made the decision as to the grantee.

## **II. The Studio School's Form 470 Complied With the Applicable Rules**

In its appeal of the SLD decision, the Studio School argued that it had complied with the applicable requirements when it filed its Form 470. It argued that the USAC had modified its requirements with respect to Item 11 since the Studio School filed its application and that the requirements applicable when it filed its Form 470 did not preclude the Studio School from listing a representative of its service provider in response to Item 11.



The Studio School also noted that (a) the USAC's instructions for the form indicated that service providers could assist applicants as long as "the service provider's assistance is neutral," and did not purport to preclude naming an individual associated with the service provider in Item 11, (b) while the individual listed in Item 11 of Form 470 was associated with the ultimately selected service provider, she was listed purely to provide information concerning the technical aspects of the proposal, and (c) the ultimate decision concerning the service provider was made by the Studio School, and not by the individual listed in Item 11. The USAC denied the appeal solely on the ground that the Studio School's service provider was listed in Item 11 and did not address any of the Studio School's other arguments. In support of that holding, the USAC cited to the discussion on the SLD web site that:

In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.<sup>2</sup>

In addition, the USAC cited the Bureau's decision in *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-

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<sup>2</sup> See Letter dated January 20, 2004 to Gail Shirar from the SLD, USAC, at p. 2. ("USAC Decision")

45 and 97-21, Order, 16 FCC Rcd 4028 (2000) (“*MasterMind*”). Neither supports the USAC Decision that the Studio School was ineligible to receive the E-rate funds.

**A. The USAC Requirements Did Not and Do Not Preclude Listing a Representative of a Service Provider in Response to Item 11 of Form 470**

While the Studio School cannot now find the instructions applicable to Form 470s filed in November 2000, when it filed its application, it believes, as Studio School argued in its appeal to the USAC, that the directions changed between the time it submitted its Form 470 and the time the SLD held that it was not qualified to receive a grant.<sup>3</sup> Specifically, the instructions for Form 470 applicable in 2000 did not indicate that a representative of a service provider could not be listed in response to Item 11 of FCC Form 470.<sup>4</sup> As the materials in Appendix A show, the Introduction to the instructions did not contain any warning about limits on assistance to be provided by a service provider, as is the case with the current instructions and the instructions in place in 2002.

Thus, the only guidance that the Studio School had concerning limits on service provider assistance was the Commission’s rule requiring that the bidding process must be fair, reasonable and untainted. This general obligation did not provide sufficient notice that the Studio School could not rely on Ms. Hawkins-Shirar, a school volunteer and its technical expert, as the person to contact for *technical* information. She was not going to

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<sup>3</sup> In its appeal, the Studio School submitted copies of the first two pages of the Instructions as of September 1999 and page 2 of the April 2002 instructions. Those submissions clearly indicated that the Introduction had changed and become more specific. See Appendix A to this Appeal.

<sup>4</sup> See Letter of Appeal, dated July 9, 2003, from Gail L. Hawkins-Shirar, Connectivity+ Inc., to Schools and Libraries Division, at p. 2. We have been unable to locate the full Instruction for Form 470 filed in connection with the Fiscal Year 2001-02 grant cycle.

be involved with the evaluation process; the proposals were going to be, and were, evaluated by Mr. Franklin Wassmer, Associate Director of the Studio School not Ms. Hawkins-Shirar. Her assistance was limited to providing potential bidders with help on technical matters. Since the teachers and administrators at the School had little or no expertise in those matters, it made little sense for the School to identify one of them; they were basically unqualified to assist prospective bidders who might have questions – unless of course they took the question to Ms. Hawkins-Shirar for an answer. Surely, the Commission did not intend to require such a cumbersome and ineffective process – and one that would not differ in a substantive way from identifying Ms. Hawkins-Shirar directly.

Accordingly, as of the time when the Studio School filed its Form 470, neither the Commission nor the USAC gave the Studio School any indication that a representative of a service provider could not be identified in Item 11. At best, the Studio School was on notice that the evaluation process had to be conducted fairly and in an unbiased manner. That was done here; the Studio School held two vendor workshops at which the proposal was discussed;<sup>5</sup> it received four bids,<sup>6</sup> and the bids were evaluated by Mr. Wassmer, an official of the School. The contract was awarded on the basis of considerations of price and service quality. Ms. Hawkins-Shirar played no part in that process. Absent more

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<sup>5</sup> The Studio School held vendor workshops on January 5 and January 11, 2001 at which the request for proposals was discussed and vendors were given the option to answer questions. Ms. Marcia McDonell and Mr. Franklin Wassmer, officials of the Studio School, participated in those workshops.

<sup>6</sup> Four companies submitted bids, Connectivity+Inc (Ms. Hawkins-Shirar's firm), Quality Telecommunications Services, Inc., Sofex/Cablelan, and Pegasus Solutions (a Cencor Company).

detailed directions and clarification that these procedures were inadequate, the Studio School's process complied with Commission requirements and its funding should not be subject to any refund requirement.

**B. The Commission's Current Requirements Do Not Preclude Naming a Representative of a Service Provider in Item 11**

As indicated above and in its initial appeal to the USAC, the Studio School believes that the instructions applicable to Form 470 changed between 2000, when it filed its Form 470, and the time the SLD ruled that its application did not comply with the applicable rules. However, even assuming *arguendo* that there was no change in the instructions and that the current instructions applied in 2000, those instructions do not preclude applicants from identifying a representative of a service provider in Item 11. The material in the Introduction provides that "The Form 470 cannot be *completed* by a service provider who will participate in the competitive process as a bidder."<sup>7</sup> That does not indicate that the service provider cannot be listed in response to Item 11, which asks for the name of the person to contact for *technical* questions concerning the funding request.

While the next sentence of the 1999 instructions indicates that an application will be tainted if a service provider is "involved" in preparing the Form 470, that sentence must be read together with the preceding sentence, which only precludes the service provider from "completing" the Form. Moreover, the discussion in the Introduction relates to concerns over whether the bidding process is somehow "tainted" by the service

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<sup>7</sup> See FCC Form 470 Instructions – April 2002, p. 2, a copy of which is attached to this appeal.

provider's identification in the Form 470. It is not intuitively obvious that listing a service provider as the source for technical information somehow "taints" the process when the evaluation is performed by the school. That is particularly true when the USAC instructions allow service providers to assist in preparing request for proposals, as long as the assistance is neutral. Thus, the USAC directions provide:

The FCC understands that applicants sometimes need to seek assistance from service providers in developing RFPs. Such assistance is permissible even if the service provider plans to submit a bid in response to that RFP as long as the service provider's assistance is neutral.<sup>8</sup>

The directions go on to state:

*Service Providers may offer technical assistance on the development of a technology plan, so long as that assistance can be interpreted as neutral and in no way as having an undue influence on the applicant's ability to conduct a fair and open competition for the necessary technology services and products.*<sup>9</sup>

While admittedly these instructions do not say that an employee of a service provider may be named in Item 11, they also do not preclude naming such an individual. To the contrary, the impression they leave is to the contrary: that service providers may be identified for assistance on technical matters. Indeed, if service providers can assist in the preparation of an RFP -- which can easily be tailored to favor the assisting service provider without being obvious about that -- it is far from obvious that a representative or employee may not be named in Item 11 when the Form 470 only starts the application process and cannot be used to favor any applicant.

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<sup>8</sup> Chapter 5 – Service Provider Role in Assisting Customers, at <http://www.sl.universalservice.org/vendor/manual/chapter5.asp>.

<sup>9</sup> *Id.*

While the current USAC directions now expressly state that applicants should not list individuals associated with service providers as the “contact person” on Form 470, the individual identified in Item 11 is not the “contact person.” The “contact person” is identified in Item 6. Item 11 only asks for the name of the individual to contact concerning *technical* issues. That reading is reinforced by the instructions for Form 470, which indicate that the individual listed in item 11 is not the contact person but the individual to be contacted solely on technical matters. Thus, they provide:

You may (but are not required to) provide the name and contact information of the person on your staff *or project* who can provide *additional technical details* or answer specific questions from service providers about the services you are seeking. This *need not* be the contact person listed on Item 6 nor the authorized person identified in Item 27.<sup>10</sup>

Given this distinction between the individuals named in items 6 and 27 as compared to the individual named in Item 11, the Studio School had no reason to believe that it could not name Ms. Hawkins-Shirar in Item 11. As noted earlier, any other response made little sense since the officials at the Studio School were largely unable to respond to requests for technical information.

Finally, interpreting the instructions to allow a representative of a service provider to be named in Item 11 is consistent with the discussion in those instructions of why a service provider may not be named as the Contact Person. That discussion makes it clear that the Commission’s concern is in preserving the integrity of the bidding process. Thus, it states:

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<sup>10</sup> *FCC Form 470 Instructions – May 2003*, at p. 11 (emphasis added).

It is unlikely that the applicant can have a fair and open competitive process if the bids are submitted to and the evaluation is carried out by a representative or employee of a Service Provider who participated in the bidding process.

Similarly, the language quoted by the USAC in its decision denying the Studio School's appeal also focuses on the importance of assuring the integrity of the bidding process:

In order to be sure that a *fair and open competition* is achieved, any marketing discussions you hold with service providers must be neutral, so *as not to taint the competitive bidding process*. That is, you should not have a relationship with a service provider prior to the competitive bidding that would *unfairly influence the outcome of a competition* or would furnish the service provider with "inside" information or allow them to unfairly compete in any way.<sup>11</sup>

However, identifying Ms. Hawkins-Shirar does not pose any such risks to the bidding process since Mr. Wassmer, an official of the school, evaluated the bids and decided which bidder would be awarded the contract. Thus, identifying her in response to that Item could not and did not chill the filing of competing bids nor did it influence the outcome of the bidding process. Consequently, the Studio School's application complied with the Commission's rules and the USAC instructions; the USAC Decision must be reversed.

**C. The Commission's Decision Does Not Preclude a Grant of the Studio School's Application**

The Commission's decision in *MasterMind Internet Services, supra*, also does not support the USAC Decision. In that case, the Commission concluded that the applicant had "surrender[ed] control of the bidding process to a service provider that participate[d]" in the bidding process. There

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<sup>11</sup> USAC Decision (*emphasis added*).

(1) an employee of MasterMind had been named as the contact person on the associated Form 470; (2) an employee of MasterMind had signed the Form 470; or (3) an employee of MasterMind had signed a Form 471 associated with the funding request.<sup>12</sup>

There is nothing comparable here; the Studio School listed Ms. Hawkins-Shirar solely in response to a question seeking a contact person for technical information. The contact person was Mr. Wassmer and the evaluation of the bids was done by him. Ms. Hawkins-Shirar, a volunteer at the school and the only individual with the technical expertise to answer questions properly, was the only reasonable person to identify in response to Item 11. She performed that function in a neutral manner and her performance did not taint or otherwise color the fairness and the reasonableness of the bidding process.<sup>13</sup> Accordingly, the Bureau's decision in MasterMind does not support the USAC's decision that the Studio School should refund the funds received through the E-rate program.

**D. The USAC Requirements Did Not Provide Adequate Notice that Ms. Hawkins-Shirar Could Not Be Identified in Item 11**

It is well established that the Commission must give adequate notice of its requirements and may not penalize applicants where that notice is not provided. *Salzar v. FCC*, 778 F.2d 869 (D.C. 1985); *Bamford v. FCC*, 535 F.2d 78, 82 (D.C. Cir.) ("elementary fairness requires clarity of standards sufficient to apprise an applicant of

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<sup>12</sup> *MasterMind*, *supra* at ¶ 4 (footnotes omitted).

<sup>13</sup> As the Studio School indicated in its appeal, Connectivity+Inc. came in with the second lowest bid. The lower bid was made by a company the School had experienced some difficulties with. See Note to File January 18, 2001, attached as Appendix B. The material was submitted as part of the Studio School's June 25, 2003 appeal.



what is expected”), *cert. denied*, 429 U.S. 895, 97 S.Ct. 255, 50 L.Ed.2d 178 (1976); *Radio Athens, Inc. (WATH) v. FCC*, 401 F.2d 398 (D.C. 1968).

Here, it is clear that the USAC directors did not provide notice that individuals associated with a service provider could not be named in Item 11. At best, the instructions indicated that Ms. Hawkins-Shirar could not be named as the contact person and that she could not be involved in the evaluation process. But there is nothing that reasonably put the Studio School on notice that they could not continue to rely on Ms. Hawkins-Shirar for the technical expertise the others at the school lacked. As such, the Studio School lacked the notice of the standard to which it would be held and the USAC Decision must be reversed.

### **III. Conclusion**

For the reasons set forth above, the Studio School requests that the Bureau reverse the decision of the USAC denying the Studio School’s appeal of the SLD determination that the Studio School was not eligible to receive the E-rate funds for the 2001-02 fiscal year. The Studio School believes the USAC Decision below relies on instructions adopted after its application was filed and its application conformed with the rules in place at the time. In all events, however, the procedures used by the Studio School to select its service provider complied with both the spirit and the letter of the Commission’s regulations and the USAC requirements both then and as currently drafted. Those rules did not indicate that a representative of a service provider could not be identified in response to Item 11.

The Studio School is precisely the kind of school Congress intended to benefit from the E-rate program. It is trying to educate children from poorer economic

environments, with less financial and frequently less emotional support than children whose parents can afford computers and Internet access. Given its economic constraints, it is essential that it rely on volunteers, particularly in areas in which its teachers and support staff lack expertise. The preparation of an E-rate application is one of those areas in which such assistance is welcome and useful, if not essential. The Studio School relied on just such a volunteer here – one who had been working with the school on technology issues. It was natural for it to rely on that individual for technical expertise in connection with this application. However, the ultimate decision making process was reserved to the school, and thus preserved the integrity of the bidding process. The USAC Decision should be reversed.

Respectfully submitted,



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Counsel for Children's Studio School  
- Public Charter School

April 19, 2004

## **Appendix A**

### **Comparison of Instructions for Form 470**

**September 1999-April 2002**

FCC Form 470

Approval by OMB  
3060-0806**Schools and Libraries Universal Service  
Description of Services Requested and Certification Form**

Estimated Average Burden Hours Per Response: 4 hours

**Instructions for Completing the  
Schools and Libraries Universal Service  
Description of Services Requested and Certification Form (FCC Form 470)**

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	Notice to Individuals	page 1
I.	Introduction	page 2
II.	Filing Requirements and General Instructions	page 2
III.	Specific Instructions	page 5
IV.	Reminders	page 15

**NOTICE TO INDIVIDUALS**

Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries requesting universal service discounts to file—individually, or as a district or system, or as a consortium—this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator, which is the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). 47 C.F.R. § 54.504. For purposes of this form, the universal service administrator will be referred to as the "SLD" or "Fund Administrator." The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254. The data collected in Form 470 will be used to ensure that schools and libraries and any consortia they comprise comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of any statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding.

If you owe a past due debt to the Federal government, the taxpayer identification number (such as your social security number) and other information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on this form, the processing of your application may be delayed or your application may be returned to you without action.

The foregoing Notice is required by the Privacy Act of 1974, Pub. L. No. 93-579, December 31, 1974, 5 U.S.C. § 552, and the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden, to the Federal Communications Commission, Performance Evaluation and Records Management Branch, Washington, D.C. 20554.

## I. INTRODUCTION

On May 7, 1997, the Commission adopted rules providing discounts on all telecommunications services, Internet access, and internal connections, referred to hereinafter as "eligible services" for all eligible schools and libraries (K-12 public and private schools and all public libraries). The Fund Administrator (the Schools and Libraries Division of the Universal Service Administrative Company) will ensure that the information is disseminated in a manner likely to attract competing providers. To initiate the competitive process, begin by filing this form with the Schools and Libraries Division (SLD), which will post it for at least 28 days to fulfill the competitive bidding requirement. Schools and libraries may sign new contracts for services eligible for discounts 28 days after the descriptions set forth in Form 470 are posted on the SLD Web Site < [www.sl.universalservice.org](http://www.sl.universalservice.org) >. The SLD will notify the applicant of the date that the applicant's request is posted and the date on which the 28-day waiting period ends. Those with questions about this application may call toll-free 888-203-8100.

## II. FILING REQUIREMENTS AND GENERAL INSTRUCTIONS

### A. Who Must File

All schools and libraries, or consortia acting on behalf of schools and libraries, requesting discounts on eligible services pursuant to the universal service discount mechanism must file Form 470. The entity that will negotiate with potential service providers should complete Form

JUN 27 2003

If you owe a past due debt to the Federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on this form, the processing of your application may be delayed or your application may be returned to you without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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## I. INTRODUCTION

- The purpose of the FCC Form 470 is to open a competitive bidding process for the services desired.
- An applicant cannot seek discounts for services in a category of service on the Form 471 if those services in those categories were not indicated on a Form 470.
- The Form 470 MUST be completed by the entity that will negotiate with potential service providers.
- The Form 470 cannot be completed by a service provider who will participate in the competitive process as a bidder. If a service provider is involved in preparing the Form 470 and that service provider appears on the associated Form 471, this will taint the competitive process and lead to denial of funding requests that rely on that Form 470.
- The Form 470 applicant is responsible for ensuring an open, fair competitive process and selecting the most cost-effective provider of the desired services.
- Applicants should save all competing bids for services to be able to demonstrate that the bid they chose is the most cost-effective, with price being the primary consideration.

JUN 27 2003

FCC Form 470 Instructions — April 2002 Page 2

## **Appendix B**

**Copy of Note to File  
dated January 18, 2001**

To: Note to file

Date: January 18, 2001

**Analyses of Bidders for Year 4 Funding**

Notes compiled by Franklin Wasamer, Associate Director.

Four bids were received for networking, hardware and LAN maintenance from QTSI, Cencor, Connectivity+ Inc. and Sofex/CableLan.

**Analyses:**

QTSI's bid is \$124,535.00 and does not include the maintenance plan.

Cencor's bid is \$64,130

Connectivity+ Inc.'s bid is \$80,543 (does include all needed requirements)

Sofex/CableLan's bid is \$103,517 and does not include fiber optic connection and maintenance plan for voice

The most favorable bid was chosen as being by Connectivity+ Inc. who was \$22,974 lower than the Sofex/CableLan and \$43,492 less than QTSI. Connectivity + Inc is also the only provider who was able to include in its bid all areas requested in the RFP.

Cencor was not chosen even though they had a lower bid due to their unsatisfactory technical service in the past.

JUN 27 2003





**Declaration of Marcia McDonnell**

I am President of the Children's Studio School - Public Charter School and am familiar with the process the Children's Studio School used in preparing the Form 470 filed for Fiscal Years 2001-02 with the Schools and Libraries Division of the Universal Service Assistance Company for E-rate funding for the Children's Studio School, in soliciting bids and in awarding the contract to Connectivity+Inc.

I have read the attached Appeal of Children's Studio School and the facts contained in that Appeal relating to the Children's Studio School and its preparation of the Form 470, solicitation of bids and award of the contract to Connectivity+Inc. is true and correct to the best of my information, knowledge and belief. The evaluation of the bids was undertaken by Mr. Franklin Wanner, Associate Director of the Children's Studio School.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 19<sup>th</sup> day of April, 2004.

  
Marcia McDonnell